IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1156 OF 2005
IN
SUMMONS FOR JUDGMENT NO.886 OF 2004
IN
SUMMARY SUIT NO.3936 OF 2003

1. Ryben Pharmaceuticals & ors. Appellants
vs.
V. Tribhovandas Respondent

Ms.Urvee Dalal i/b.M/s.Yusuf and Associates for the appellants.

Mr.M.K.Shah for the respondent.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 27th January 2006

P.C.

Heard.

2. Admit.

3. Mr.M.K.Shah, advocate waives service for the respondent.

4. The appeal is heard finally at this stage.

5. The defendants 1 to 4 are in appeal aggrieved by the order dated 4th October 2005 passed by the learned trial Judge granting conditional leave to defend to these

defendants on deposit of a sum of Rs.5,00,000/- (Rupees five lacs) in this court within a period of four weeks from the date of that order.

6. The claim of the respondents who are plaintiffs in the Suit is founded on the goods sold, supplied and delivered and non-payment thereof. It is plaintiffs' case that pursuant to the written order dated 17th April 2002 for purchase of the goods as set out in para 2 of the plaint, the defendants were supplied the goods and the invoices were raised. The goods supplied to the defendants were of Rs. 1,53,651.56. The defendants paid a sum of Rs.9,80,000/- by their cheque dated 28th May 2002 and Rs.1,53,651.56 ps. by their cheque dated 28th January 2003 and failed and neglected to pay the balance price of Rs.3,70,000/-. The plaintiffs have claimed interest at the rate of 24% per annum from the due dates and, thus, claimed a sum of Rs.5,54,500.30 ps. and interest on Rs.3,70,000/- at the rate of 24% per annum during the pendency of the Suit.

7. That the subject goods were delivered to the defendants by the plaintiffs is not in dispute. According to the defendants, there was a joint venture between the plaintiffs and the defendants and goods supplied by the plaintiffs were pursuant to the joint venture agreement. The learned Single Judge was not

impressed by the defence set up by the defendants and held that there was no evidence whatsoever to show that there was any joint venture agreement. We find no justification to take different view.

8. However, we find that the balance of price of goods supplied by the plaintiffs to the defendants was Rs.3,70,000/- and taking overall facts and circumstances of the case, it would be in the fitness of things if conditional leave is granted to the defendants on deposit of a sum of Rs.3,70,000/-.

9. We, accordingly, allow the appeal in part and modify the impugned order of the learned trial Judge by directing the defendants to deposit a sum of Rs.3,70,000/- (Rupees three lacs seventy thousand) by 28th February 2006. Upon deposit of the said amount, the defendants shall be treated as having been granted leave to defend the Suit and Suit shall stand transferred to the List of Commercial Causes and be proceeded with accordingly.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)